IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2478 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARANBHAI TRIKAMBHAI PATEL - Petitioner(s)
Versus
MANEKCHOWK CO-OP BANK LTD & 2 - Respondent(s)

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Appearance :
MR BS PATEL for Petitioner(s) : 1,MRS RANJAN B PATEL for Petitioner(s) : 1,
MR TS NANAVATI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/06/2006

ORAL JUDGMENT

1. Rule. Learned advocate Shri T.S. Nanavati waives service of notice of rule on behalf of

respondent no.1. Learned advocate for the petitioner seeks permission to delete respondents no.2 and 3. Permission is granted.

2. The petitioner has challenged the order dated 05-05-2005 passed by the Gujarat Cooperative Tribunal as well as one passed by the Tribunal on 06-02-2006.

3. Against the petitioner and two other persons, the respondent-Bank had filed a Lavad Suit seeking recovery of certain amount loaned to the principal debtor. Admittedly, the petitioner was a guarantor. So far as the petitioner is concerned, the Board of Nominees passed an order on 17-09-2001 in Summary Suit No.460/2001. It is the case of the petitioner that the said order was ex-parte and the petitioner could not participate in the proceedings though duly served for certain reasons. Ultimately, since none of the judgement debtors paid up the amount as directed by the Board of Nominees, in recovery application filed by the Bank by an

order dated 22-7-2004, providing that from the monthly salary payable to the petitioner, there will be a recovery of Rs. 2500/- or 25% of the basic salary whichever is higher. The petitioner has been suffering the said recovery since then. The petitioner appealed against the said order as well as sought to appeal against the initial judgement and decree passed by the Lavad Court. The petitioner sought condonation of delay suggesting that he was not aware about the decree passed by the Board of Nominees and that delay should be condoned. His application seeking condonation of delay was rejected by an order dated 5-5-2005. The petitioner filed a review application which was also rejected by an order dated 6-6-2006. It was because of this reason that the petitioner has filed the present petition.

4. I have heard the learned advocates appearing for the parties. Considering the fact that the petitioner was not principal debtor but a guarantor of loan released by respondent-Bank,

considering the fact that the Bank has not been able to execute the debt from the Principal Debtors and are therefore, periodically withdrawing 1/4th of basic salary of the petitioner and also considering the averments made by the petitioner in the present petition as well as in the application for condonation of delay, I find that the petitioner deserves an opportunity to defend himself.

5. Having heard the learned advocates for some time in the interest of the petitioner as well as to expedite the conclusions of the issues which would also be in the interest of Bank, I find it appropriate that instead of allowing the delay condonation application and granting permission to appeal, proper course to be adopted would be to permit the petitioner to represent his case before the Board of Nominees and defend himself in the Lavad Suit. For the above purpose both the orders passed by the Cooperative Tribunal dated 5-5-2005 and 6-2-2006 are set aside. Simultaneously, award passed by the Lavad Court

dated 17-9-2001 to award Rs. 3,96,479/- in so far as present petitioner alone is concerned, is quashed. The intention of the Court is amply clear. The petitioner as a Guarantor is given an opportunity to defend himself which opportunity the principal debtor and other original defendants neither sought nor are granted. The decree and award so far as these persons are concerned are not disturbed. The petitioner shall have a limited right to defend himself before the Lavad Court so far as he himself alone is concerned. This is conditional upon the petitioner permitting the respondents to recover from his salary a sum of Rs. 2500/- per month or 25% of the basic salary whichever is higher as provided by the Lavad Court by its order dated 22-7-2004. This arrangement shall continue till final outcome of the remand proceedings before the Board of Nominees and subject to further orders that may be passed thereof. The Board of Nominees may expedite the proceedings and may endeavour to dispose of same expeditiously and preferably within a period of four months from

the date of receipt of a copy of this order.

6. With these directions the petition is disposed of. Rule made absolute accordingly with no order as to costs.

7. Till the remand proceedings are disposed of, the petitioner shall maintain status-quo with respect to his immovable properties and shall not transfer, alienate or in any other manner create any charge over their properties.

(Akil Kureshi,J.)

(raghu)